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LEGISLATURE OF THE STATE OF IDAHO
Sixty-third Legislature First Regular Session - 2015

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1 AN ACT
2 RELATING TO PUBLIC DEFENSE; AMENDING SECTION 19-853, IDAHO CODE, TO PROVIDE
3 THAT A COURT MAY APPOINT A SUBSTITUTE DEFENDING ATTORNEY IN CERTAIN
4 INSTANCES; AND AMENDING SECTION 19-860, IDAHO CODE, TO PROVIDE FOR THE
5 TERM OF A PUBLIC DEFENDER, TO REVISE TERMINOLOGY, TO CLARIFY WHEN AN
6 APPOINTED CANDIDATE ATTORNEY MUST BE LICENSED TO PRACTICE LAW AND TO
7 PROVIDE FOR COMPENSATION AND EXPENSES FOR AN APPOINTED ATTORNEY OTHER
8 THAN A PUBLIC DEFENDER.

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Section 19-853, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 19-853. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUNSEL. (1) If
13 a person who is being detained by a law enforcement officer, or who is con-
14 fined or who is the subject of hospitalization proceedings pursuant to sec-
15 tion 66-322, 66-326, 66-329, 66-404 or 66-406, Idaho Code, or who is under
16 formal charge of having committed, or is being detained under a conviction
17 of, a serious crime, is not represented by an attorney under conditions in
18 which a person having his own counsel would be entitled to be so represented,
19 the law enforcement officers concerned, upon commencement of detention, or
20 the court, upon formal charge or hearing, as the case may be, shall:

21 (a) Clearly inform him of his right to counsel and of the right of an
22 indigent person to be represented by an attorney at public expense; and

23 (b) If the person detained or charged does not have an attorney, no-
24 tify the defending attorney or trial court concerned, as the case may
25 be, that he is not so represented. As used in this subsection, the term
26 "commencement of detention" includes the taking into custody of a pro-
27 bationer.

28 (2) Upon commencement of any later judicial proceeding relating to the
29 same matter including, but not limited to, preliminary hearing, arraign-
30 ment, trial, any post-conviction proceeding or post-commitment proceeding,
31 the presiding officer shall clearly inform the person so detained or charged
32 of his right to counsel and of the right of an indigent person to be repre-
33 sented by an attorney at public expense. Provided, the appointment of an
34 attorney at public expense in uniform post-conviction procedure act pro-
35 ceedings shall be in accordance with section 19-4904, Idaho Code.

36 (3) If a court determines that the person is entitled to be represented
37 by an attorney at public expense, it shall promptly notify the defending at-
38 torney. The court shall have the authority to appoint a substitute attorney
39 only where there is a conflict or upon the request of the defending attorney.

40 (4) Upon notification by the court [or assignment under this section],
41 the defending attorney shall represent the person with respect to whom the
42 notification is made.

1 SECTION 2. That Section 19-860, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 19-860. PUBLIC DEFENDER -- TERM -- COMPENSATION -- APPOINTMENT --
4 QUALIFICATIONS. If the board of county commissioners of a county elects to
5 establish and maintain an office of public defender and/or juvenile public
6 defender or a joint office of public defender, the board shall:

7 (1) Prescribe the qualifications of such public defender and his rate
8 of annual compensation, and, if so desired by the board, a rate of compensa-
9 tion for extraordinary services not recurring on a regular basis. So far as
10 is possible, the compensation paid to such public defender shall not be less
11 than the compensation paid to the county prosecutor for that portion of his
12 practice devoted to criminal law. The public defender shall serve for a term
13 of four (4) years, during which term he may be removed only for good cause
14 shown.

15 (2) Provide for the establishment, maintenance and support of his of-
16 fice. The board of county commissioners shall appoint a public defender
17 and/or juvenile public defender from a panel of not more than five (5) and
18 not fewer than three (3) persons, if that many are available, designated by a
19 committee of lawyers appointed by the administrative judge of the judicial
20 district encompassing the county or his designee. ~~To be a candidate, a per-~~
21 ~~son~~ The appointed candidate must be licensed to practice law in this state at
22 the time he takes office and must be competent to counsel and defend a person
23 charged with a crime.

24 (3) If a court before whom a person appears upon a formal charge assigns
25 an attorney other than a public defender or contract defending attorney, to
26 represent an indigent person, the appropriate district court, upon applica-
27 tion, shall prescribe a reasonable rate of compensation for his services and
28 shall determine the direct expenses necessary to representation for which he
29 should be reimbursed. The county shall pay the attorney the amounts so pre-
30 scribed. The attorney shall be compensated for his services with regard to
31 the complexity of the issues, the time involved and other relevant consider-
32 ations.